IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1105

McCANN L. REID, *Petitioner,*

v.

MEMPHIS PUBLISHING COMPANY, *Respondent.*

MOTION OF GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

and

BRIEF OF GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AS AMICUS CURIAE IN SUPPORT OF PETITION OF CERTIORARI

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The General Conference of Seventh-day Adventists respectfully moves this Court for Leave to File the accompanying Brief in this case as Amicus Curiae. The consent of the Attorney for the Petitioner herein has been obtained, but the Attorney for the Respondent herein refused to consent to the filing of a Brief by the General Conference of Seventh-day Adventists as Amicus Curiae.

The Applicant, General Conference of Seventh-day Adventists, has an interest in this case in that McCann L. Reid, Plaintiff-Petitioner, is a member of the Seventh-day Adventist Church and the issues before this Court arise out of the observance of a religious tenet and a charge of religious discrimination filed before the United States Equal Employment Opportunity Commission.

Throughout the United States, there are currently pending a number of religious discrimination cases involving members of the Seventh-day Adventist Church.

The ultimate decision in this case will directly affect those cases. The rights and interests of other members of the Seventh-day Adventist Church in proceedings now pending before state and federal courts and administrative agencies may well be determined by the holdings in this case.

The Brief of the Petitioner herein is directed toward the interests of the Petitioner. Applicant, however, believes that the impact of this case as it affects members of the Seventh-day Adventist Church and other Sabbatarians has not been adequately presented by the Petitioner. The concern of the Seventh-day Adventist Church for the substantial number of its members affected by the holdings in this case prompt the filing of this Motion.

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INTEREST OF THE AMICUS CURIAE

The Seventh-day Adventist Church is a recognized religious denomination having a world-wide membership. It became an original church body in 1863. Today it has a world membership of slightly less than 2½ million people. Within the fifty states and the District of Columbia are more than 3,000 local Seventh-day Adventist congregations with a membership of approximately 470,000.

The Seventh-day Adventist Church historically has directed its efforts at protecting freedom of religion and combating religious discrimination.

Throughout the United States there are many religious discrimination cases involving members of the Seventh-day Adventist Church currently pending in federal and state courts. The decision in this matter will directly affect the outcome of those cases.

In addition, the developing law to which this case is addressed will affect the future job opportunities of all Sabbatarians. The Seventh-day Adventist Church has, therefore, a vital interest in this case.

ARGUMENT

THE PETITION FOR A WRIT OF CERTIORARI INVOLVES A QUESTION OF EXCEPTIONAL IMPORTANCE DIRECTLY AFFECTING SABBATARIANS WHO, BY THE HOLDING OF THE COURT OF APPEALS, ARE DENIED EQUALITY OF EMPLOYMENT OPPORTUNITIES MANDATED UNDER TITLE VII

The Decision of the Sixth Circuit in the first Appeal in this case reported at 468 F.2d 346 (6th Cir., 1972) [*Reid* (I)] has often been cited and relied upon in decisions of other federal courts both at the district and appeals court levels. *Reid* (I) has also been repeatedly referred to for interpretive purposes by state courts and agencies.

After Congress passed the 1972 Amendment to the Civil Rights Act of 1964 adding § 2000e(j), the courts universally held that the EEOC Guidelines on Religious Discrimination adopted in 1967 [29 C.F.R. § 1605.1] expressed the intent of Congress when it enacted the Civil Rights Act of 1964. Federal and state courts have cited *Riley* v. *Bendix Corp.*, 464 F.2d 1113 (5th Cir., 1972), and *Reid* (I), *supra* as authority for this position.

The effect of this holding was to establish that an employer had the affirmative obligation to make reasonable accommodations to the religious needs of employees where such accommodations could be made without undue hardship on the conduct of the employer's business.

Court's, relying on *Reid* (I), and *Riley, supra,* held that "because of the particularly sensitive nature of discharging . . . an employee . . . on account of his religious beliefs, the employer has the burden of proving that an undue hardship renders the required accommodation to the religious needs of the employee unreasonable" under 29 C.F.R. § 1605.1.

Sabbatarians have long faced the "built-in-headwinds" of an employment policy that required employees, particularly new employees, to work on Friday night or Saturday. This practice operates to exclude Sabbatarians from employment.

This very real problem was recently recognized by the Eighth Circuit Court of Appeals in *Hardison* v. *Transworld Airlines, Inc.*, — F.2d —; 11 FEP Cases 1121 (8th Cir., 1975). In a footnote the Court observed:

> "If Saturday work inevitably falls to the employee with lowest seniority, one may well ask whether such seniority provisions would not effectively preclude TWA from ever hiring those Seventh-day Adventist, Orthodox Jews, and members of the Worldwide Church of God whose religious convictions preclude work from sundown on Friday until sundown on Saturday. It is no answer to such a person or to the statute itself, that if he compromises his religious beliefs for a time he may de-

velop enough seniority to practice them again." 11 FEP Cases 1121 at 1127.

Many long-term employees who, subsequent to their employment, embraced the teachings of strict Sabbath observance also have faced the cruel choice of giving up their jobs or violating deeply held religious convictions.

Throughout this nation, Sabbatarians have been denied the opportunity of employment because of the unwillingness of employers to adjust their rigid policies to the needs of the Sabbath observer. As our society has become more complex, industrialized and impersonal, it has become correspondingly more difficult for Sabbatarians to find employment where their religious needs are voluntarily accommodated. Many have faced the economic hardships of unemployment as a result of their convictions.

The Chief Justice, in *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971), stated that the objective of Title VII was to achieve equality of employment opportunities. 401 U.S. at 429. In *Griggs* this Court, in defining the term "discrimination" as used in Title VII, rejected the concept that "ill will" was the sole criteria. It also held that the term meant more than "unequal treatment". Although ill will and unequal treatment are illegal discriminatory practices, this Court held that Title VII is also directed against the "consequences" or "effects" of an employment system. 401 U.S. at 432. According to *Griggs,* if an employment practice operates to exclude a minority, it is illegally discriminatory. As the Court stated:

> "The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation." 401 US at 431

In *Griggs,* this Court also held that good intent or absence of discriminatory intent does not redeem a system which operates as "built-in-headwinds" for minority groups. 401 U.S. at 432 An employer which maintains a system which adversely affects a minority class [i.e. in this case Sabbatarians] must thus establish that an alternate practice is not available to accommodate the class.

Griggs stated that the touchstone was "business necessity," 401 U.S. at 431. As stated in *Robinson* v. *Lorillard,* 444 F.2d 791, 798 (4th Cir., 1971), no practice is "necessary" unless a reasonable alternative to the action is non-existent. See also *Harper* v. *Mayor & City Council,* 359 F. Supp. 1187 (D. Md., 1973); *United States* v. *Bethlehem Steel Corp.,* 446 F.2d 652 (2nd Cir., 1971); *Wallace* v. *Debron Corp.,* 494 F.2d 674 (8th Cir., 1974). It is submitted that the business necessity test requires the Court to look at alternate ways in which an employer may operate. It also requires the employer to operate in such a way as to have the least desperate or adverse impact on the minority class affected by the policy.

The 1967 EEOC Guidelines on Religious Discrimination, therefore, are in accordance with the *Griggs* definition of "discrimination". It is submitted that the interpretation of the term "discrimination" by the majority in *Reid* II is narrower in scope than that adopted by this Court in *Griggs.*

Sabbatarians can never achieve equality of employment opportunity so long as employers are permitted to arbitrarily exclude from employment those who cannot, because of conscience, work on their Sabbath.

CONCLUSION

The Petition for a Writ of Certiorari sought in this case should be granted.

Respectfully submitted,

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